

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

JAY GREER,

Plaintiff,

v.

PATRICK GLEBE, et al.,

Defendants.

CASE NO. C14-5657 BHS-JRC

ORDER ADOPTING REPORT
AND RECOMMENDATION

This matter comes before the Court on the Report and Recommendation (“R&R”) of the Honorable J. Richard Creatura, United States Magistrate Judge (Dkt. 36), and Defendant’s objections to the R&R (Dkt. 38).

On September 3, 2015, Judge Creatura issued the R&R recommending that the Court (1) deny Defendants’ motion to dismiss Plaintiff Jay Greer’s (“Greer”) claims against Defendants Ken Erb and Stella Jennings; (2) grant Defendants’ motion to dismiss Greer’s claims against Patrick Glebe, Denis Harmon, Lyle Morse, and Charles Rohrer with leave to amend; and (3) grant Defendants’ motion to dismiss on Greer’s claims for due process violations related to his prison employment, EFV, classification level and transfer. Dkt. 36 at 2. On September 17, 2015, Defendants filed objections. Dkt. 38.

1 The district judge must determine de novo any part of the magistrate judge's
2 disposition that has been properly objected to. The district judge may accept, reject, or
3 modify the recommended disposition; receive further evidence; or return the matter to the
4 magistrate judge with instructions. Fed. R. Civ. P. 72(b)(3).


5 In this case, Defendants' substantive objections go to the merits of the claims
6 instead of the sufficiency of the allegations. For example, Defendants argue that Greer's
7 allegations are "not probative or relevant" in violation of the Federal Rules of Evidence
8 and that Greer's allegations are "clearly not supported by the record" Dkt. 38 at 6,
9 8. While Greer may ultimately fail to submit sufficient evidence in support of his claims,
10 at this stage of the proceeding, Greer is only required to allege sufficient facts in support
11 of his claims. *Balistreri v. Pacifica Police Department*, 901 F.2d 696, 699 (9th Cir.
12 1990). Moreover, all of the allegations and inferences must be taken in the light most
13 favorable to Greer. *Keniston v. Roberts*, 717 F.2d 1295, 1301 (9th Cir. 1983). Under
14 these standards, the Court agrees with Judge Creatura that Greer has alleged sufficient
15 facts to support his claims against Defendants Ken Erb and Stella Jennings.

16 With regard to Defendants' objections to granting Greer leave to amend,
17 Defendants' arguments also miss the mark. "Dismissal of a *pro se* complaint without
18 leave to amend is proper only if it is absolutely clear that the deficiencies of the
19 complaint could not be cured by amendment." *Schucker v. Rockwood*, 846 F.2d 1202,
20 1203-04 (9th Cir.1988) (internal quotation marks and citation omitted). The Court
21 agrees with Judge Creatura that it is not absolutely clear that Greer is unable to cure the
22 identified deficiencies in his complaint.

1 Therefore, the Court having considered the R&R, Defendants' objections, and the
2 remaining record, does hereby find and order as follows:

- 3 (1) The R&R is **ADOPTED**;
- 4 (2) Defendants' motion to dismiss is **GRANTED in part** and **DENIED in**
5 **part** as stated herein;
- 6 (3) Greer is **GRANTED** leave to amend his complaint and must either file an
7 amended complaint no later than November 20, 2015 or show cause why it
8 could not be filed by this date; and
- 9 (4) The matter is referred back to Judge Creatura for further proceedings.

10 Dated this 20th day of October, 2015.

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13 BENJAMIN H. SETTLE
14 United States District Judge
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